

REMARKS

Favorable reconsideration of this application, in view of the present amendments and in light of the following discussion, is respectfully requested.

This amendment is submitted in accordance with 37 C.F.R. § 1.116, which after final rejection permits the entry of amendments canceling claims, complying with any requirement of form expressly set forth in a previous Office Action or presenting rejected claims in better form for consideration on appeal. The present amendment places the claims in condition for allowance without requiring further search and/or consideration. Therefore, it is respectfully requested that the present amendment be entered under 37 C.F.R. § 1.116.

After entry of this amendment, Claims 1-9, 11-18, 20-23, 25 and 32 are pending. Claims 1, 3-9, 11-13 and 32 are amended to further clarify the features contained therein, and Claims 10, 24, 26-31, and 33-37 are canceled without prejudice or disclaimer. No new matter is introduced.

In the outstanding Office Action, Claims 1-16, 26 and 32-37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston (WO 01/77815) in view of Johnson (U.S. Patent Application Publication No. 2002/0049841) and Piskiel (WO 97/46939); Claim 17 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston, Johnson, in Piskiel further view of Hutcheson (U.S. Patent No. 6,947,761); Claim 18 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston, Johnson, Piskiel and Suarez (U.S. Patent No. 5,790,789); Claims 20-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston, Johnson and Piskiel in further view of De Mendonca (U.S. Patent Application Publication No. 2004/0172453); Claims 27-28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston, Johnson and Piskiel in further view of Guruprasad (U.S. Patent No. 6,802,068); Claim 29 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston, Johnson, Piskiel, and Guruprasad in further view of Iyer

(U.S. Patent Application Publication No. 2004/0203749); Claim 30 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston, Johnson and Piskiel in further view of Podgorny (U.S. Patent No. 6,078,948); and Claim 31 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston, Johnson and Piskiel in further view of Vange (U.S. Patent No. 7,020,783).

With respect to the rejection of Claims 1-16, 26 and 32-37 as being unpatentable over Logston, Johnson and Piskiel, amended Claim 1 recites, *inter alia*, a data access replication or communication system that includes a terminal with an electronic memory storing a terminal-side executable and a server with an electronic memory storing a server-side executable where:

... the terminal-side executable and the server-side executable *exchange one or more of the packets forming the message during communication using a message queuing system over a network to perform session-independent exchange of messages*, the terminal-side executable and the server-side executable together constituting a software application distributed between the terminal and the server in a predetermined proportion *to cooperatively function as a client of a second server*. (Emphasis added.)

It is believed that none of the cited references describe these features.

Logston describes determination and characterization of resource capabilities of client devices in a distribution application network. More specifically, Logston describes that a physical server device (250) includes both a slave server portion (252) and a master server portion (254).¹ The slave server portion (252), which supports the distributed application server portion (DASP), acts as a client to the master server portion (254), and is configured as any other client device having resources thinner relative to the master server (254).² Logston also describes that the DASP determines which components and/or modules of the distributed

¹ Logston page 11, lines 16-19.

² Logston at page 11, lines 19-23.

application client portion (DACP) are to be installed in the client devices (208) using client configuration records (214).³

However, Logston does not describe that the slave server portion (252) and the DACP on the client devices (208) cooperatively function as a single client application to the master slave portion (254). Instead, Logston describes that the slave server portion (252) can be configured *as any other client*, without describing that the DACP in the client device (208) is taken into account during configuration of the slave server portion.⁴ Thus, Logston merely describes the slave server portion (252) *as a stand-alone client* to the master slave portion (254) rather than part of a distributed client application that cooperatively works with corresponding software on the client device (208). Conversely, amended Claim 1 recites that the terminal-side executable and the server-side executable together constitute a software application distributed between the terminal and the server in a predetermined proportion to *cooperatively function as a client of a second server*. Therefore, Logston fails to disclose the terminal-side executable and the server-side executable as recited in amended Claim 1.

Logston also does not describe that the resources and functionality of the DACP and DASP are distributed between the slave server (252) and the client device (208) in a predetermined proportion. Instead, Logston describes that functionality is selectively downloaded to the thinner slave from a master in order to make more complete or efficient use of hardware resources in a process akin to load balancing.⁵ As such, Logston describes incrementally downloading additional functionality from a master to a slave and subsequently testing after each download for the required functionality.⁶ Therefore, Logston fails to disclose that the terminal-side executable and the server-side executable together constituting

³ Logston at page 11, lines 7-15.

⁴ Logston at page 11, lines 20-23.

⁵ Logston at page 11, lines 25-30.

⁶ Logston at page 11, lines 30-34.

a software application distributed between the terminal and the server in a predetermined proportion as recited in amended Claim 1.

Furthermore, Piskiel describes a balanced queue system for delivery of messages in a distributed computing environment.⁷ Piskiel describes that messages are delivered by an originating node (200) to a receiving node (220), and respectively stored in message queues (214, 234) of the nodes (200, 220).⁸ If a transmission error occurs, Piskiel describes that message states are maintained in the queues (214, 234) and subsequently recovered when transmission resumes.⁹

However, Piskiel does not describe that the originating node (200) and receiving node (220) exchange one or more packets, which form the message, to perform a session-independent exchange of messages. Piskiel concerns only the delivery of messages between applications rather than between physical devices. As such, Piskiel only describes delivery of *messages* from the originating node (200) to the receiving node (220), not delivery of packets, and also describes resending messages that are not received before a timeout.¹⁰ Piskiel even describes a mechanism to avoid processing of duplicate mechanisms.¹¹ In other words, Piskiel describes message-level transmissions between applications in which messages not fully received must be retransmitted in their entirety. Nowhere does Piskiel describe packet-level communication, much less transmission of one or more packets to perform session-independent communication.

As first recognized by the present inventors, transmission of one or more packets to perform session-independent communication as recited in Claim 1, avoids retransmission of

⁷ Piskiel at page 4, lines 10-20.

⁸ Piskiel at page 4, lines 10-20; page 14, lines 20-30; page 16, lines 5-21; and also Figure 2.

⁹ Piskiel at page 32, lines 15-27.

¹⁰ Piskiel at page 15, lines 1-11; page 32, lines 3-8.

¹¹ Piskiel at page 6, line 28-page 7, line 2.

the entire message should a packet be lost.¹² As such, Piskiel fails to disclose the transmission of one or more packets to perform session-independent communication as recited in amended Claim 1, and Johnson does not cure this deficiency in Piskiel or the deficiencies in Logston identified above. As such, no combination of Logston, Johnson and Piskiel describe every feature recited in amended Claim 1, and amended Claim 1 is believed to be in condition for allowance together with any claim depending therefrom. Accordingly, it is respectfully requested that the rejection of Claims 1-16, 26 and 30-37 under 35 U.S.C. § 103(a) be withdrawn.

As all other rejections of record rely upon Logston and Piskiel for describing the above-distinguished features, and the above-distinguished features are not disclosed or suggested by Logston or Piskiel, alone, in combination or in combination with any other art of record, it is respectfully submit that a *prima facie* case of obviousness has not been presented. Accordingly, it is respectfully requested that the rejection of Claims 17-18, 20-25 and 27-31 under 35 U.S.C. § 103(a) be withdrawn.

For the reasons discussed above, no further issues are believed to be outstanding in the present application and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance for Claims 1-9, 11-18, 20-23, 25 and 32 is earnestly solicited.

¹² See the specification at page 19.

Should, however, the above distinctions be found unpersuasive, Applicants respectfully request that the Examiner provide an explanation via Advisory Action under MPEP § 714.13 specifically rebutting the points raised herein.

Respectfully submitted,

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